

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
	)	
Charter Communications	)	CSR-6713-E
	)	CSR-6714-E
	)	CSR-6715-E
Eight Petitions for Determination of Effective	)	CSR-6716-E
Competition in Twenty-Three Local Franchise	)	CSR-6717-E
Areas in Michigan	)	CSR-6718-E
	)	CSR-6719-E
	)	CSR-6720-E

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 30, 2005**

**Released: July 1, 2005**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. This Order considers eight petitions filed with the Commission by Charter Communications, on behalf of its affiliates, ("Charter") pursuant to Sections 76.7, 76.905(b)(1) & (2) and 76.907 of the Commission's rules for a determination that Charter's cable systems serving twenty-three Michigan communities (the "Communities") are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act") and are therefore exempt from cable rate regulation.<sup>1</sup> The Communities are listed in Attachment A. No opposition to any petition was filed. We grant the petitions finding that the Charter cable systems are subject to effective competition in the listed Communities.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>2</sup> as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules.<sup>3</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>4</sup>

**II. DISCUSSION**

**A. Competing Provider Effective Competition**

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel

<sup>1</sup> 47 C.F.R. §§ 76.7, 76.905(b)(1)& (2), 76.907; 47 U.S.C. § 543(a)(1).

<sup>2</sup> 47 C.F.R. § 76.906.

<sup>3</sup> 47 C.F.R. § 76.905.

<sup>4</sup> See 47 C.F.R. §§ 76.906 & 907.

video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.<sup>5</sup> Turning to the first prong of this test, the DBS service of DirecTV, Inc. ("DirecTV") and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>6</sup> The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.<sup>7</sup> In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.<sup>8</sup> We further find that the Charter cable systems have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area.<sup>9</sup> Charter has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.<sup>10</sup> Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Charter sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association ("SCBA") that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.<sup>11</sup> Charter asserts that it is the largest MVPD in the majority of the Communities because its subscribership exceeds the aggregate DBS subscribership for those franchise areas.<sup>12</sup> With respect to

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<sup>5</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>6</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>7</sup> *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

<sup>8</sup> *See* 47 C.F.R. § 76.905(g).

<sup>9</sup> Charter Petitions at 5 and Exhibit 2.

<sup>10</sup> *Id.* at 4 and Exhibit 1.

<sup>11</sup> *Id.* at 6-7. Charter acknowledges that a standard five-digit zip code in certain cases may not coincide precisely with the boundaries of a cable operator's franchise area. To overcome this potential problem, Charter has applied a competitive penetration methodology. The Commission has approved this methodology for determining DBS subscribership. *See, e.g., In re Petition for Determination of Effective Competition in San Luis Obispo County, California*, 17 FCC Rcd 4617 (2002); *Fibervision, Inc. Petition for Determination of Effective Competition in Laurel, MT and Park City, MT*, 17 FCC Rcd 16313 (2002).

<sup>12</sup> Charter Petitions at 6. *See also* Declaration of Denise Jones-Williams, Director of Regulatory Compliance for Charter Communications (March 28, 2005). The Declaration of Ms. Jones-Williams states that Charter is the largest multichannel video program provider in 19 of the 22 Communities at issue.

the communities of Brooks, Dorr and Wayland Township, Charter asserts that the respective aggregate allocated DBS subscriber figures (596, 809, and 298) are slightly larger than Charter's subscriber counts (590, 593 and 191) in those respective communities. However, Charter contends that because there are two major DBS providers in those Communities, it is likely that Charter is still the largest individual MVPD in these franchise areas.<sup>13</sup>

5. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Charter has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in those noted Communities. With regard to the Communities of Brooks, Dorr and Wayland Township, we are able to conclude that this portion of the test is met by analyzing the data submitted for both Charter and the DBS providers. If the subscriber penetration for both Charter and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.<sup>14</sup> In Brooks, the combined DBS penetration rate is 41.4 percent and Charter's penetration rate is 40.1 percent.<sup>15</sup> In Dorr, the combined DBS penetration rate is 38.5 percent and Charter's penetration rate is 28.2 percent.<sup>16</sup> In Wayland Township, the combined DBS penetration rate is 28.3 percent and Charter's penetration rate is 18.1 percent.<sup>17</sup> Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Charter has submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

#### B. Low Penetration Effective Competition

6. Section 623(1)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system."<sup>18</sup> Charter asserts that it is subject to effective competition in the Dorr, Wayland Township and Gaines Franchise Areas under the low penetration effective competition test.<sup>19</sup> Charter submitted information listed on Attachment A showing that its penetration rate in the Dorr Franchise Area is 28.2 percent; in the Wayland Township Franchise Area, its penetration rate is 18.1 percent; and, in the Gaines Franchise Area, the penetration rate is 4.2 percent. Accordingly, we conclude that Charter has demonstrated the existence of low penetration effective competition under our rules in the Dorr, Wayland Township and Gaines Franchise Areas.

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by Charter Communications for a

<sup>13</sup> Charter Petitions at n.16. *See also* Declaration of Denise Jones-Williams, Director of Regulatory Compliance for Charter Communications (March 28, 2005).

<sup>14</sup> *See Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (MB 2002).

<sup>15</sup>  $596 \text{ DBS subscribers} \div 1,441 \text{ Brooks 2000 Census Households} = 41.4\%$ ;  $590 \text{ Charter subscribers} \div 1,441 \text{ Brooks 2000 Census Households} = 40.1\%$ .

<sup>16</sup>  $809 \text{ DBS subscribers} \div 2,100 \text{ Dorr 2000 Census Households} = 38.5\%$ ;  $593 \text{ Charter subscribers} \div 2,100 \text{ Dorr 2000 Census Households} = 28.2\%$ .

<sup>17</sup>  $298 \text{ DBS subscribers} \div 1,053 \text{ Wayland Township 2000 Census Households} = 28.3\%$ ;  $191 \text{ Charter subscribers} \div 1,053 \text{ Wayland Township 2000 Census Households} = 18.1\%$ .

<sup>18</sup> 47 U.S.C. § 543(1)(1)(A).

<sup>19</sup> Charter Petitions at 8. *See also* Declaration of Denise Jones-Williams, Director of Regulatory Compliance for Charter Communications (March 28, 2005).

determination of effective competition in the Communities listed on Attachment A **ARE GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Charter Communications in the affected Communities **ARE REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>20</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>20</sup> 47 C.F.R. § 0.283.

## Attachment A

## Charter Cable Systems Subject to Competing Provider Effective Competition

## CSR-6713-E through CSR-6720-E

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Allegan, City	MI0020	28.4.7%	1,831	520
Brooks, Township	MI1170	41.4%	1,441	596
Caledonia, Township (Kent County)	MI0655	27.4%	3,075	844
Caledonia, Village (Kent County)	MI0654	22.8%	430	98
Cooper, Township	MI0098	16.0%	3,187	509
Coopersville, City	MI0486	25.6%	1,420	363
Custer, Village	MI1615	42.7%	117	50
Dorr, Township	MI0596	38.5%	2,100	809
Fruitland, Township	MI0319	18.6%	1,859	346
Holland, Township (Ottawa County)	MI0344	15.6%	9,821	1,537
Hudsonville, City	MI0700	16.6%	2,514	417
Lakeview, Village	MI1211	36.4%	396	144
Leighton, Township	MI0597	29.3%	1,246	365
	MI1342			
Morley, Village	MI1622	35.6%	194	69
Newaygo, City	MI1174	38.1%	620	236
Otsego, City	MI0199	26.3%	1,553	408
Parchment, City	MI0096	15.9%	822	131
Plainwell, City	MI0198	27.4%	1,506	412
Wayland, City	MI0595	27.7%	1,466	406

Wayland, Township	MI0825	28.3%	1,053	298
Yankee Springs, Township	MI0732	34.1%	1,628	555
Zeeland, Township	MI1522	16.3%	2,523	412
	MI0683			
	MI1558			

**Charter Systems Subject to Low Penetration Effective Competition**

<b>Communities</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Level</b>
Dorr, Township	2,100	593	28.2%
Gaines Township	7,501	317	4.2%
(Kent County)			
Wayland, Township	1,053	191	18.1%

CPR = Percent DBS penetration

+ = See Charter Petitions